

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant,

v

THOMAS K. ABBOTT,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

Mr. Daniel M. Levy (P-39215)
Assistant Attorney General
Attorney for State Treasurer
Cadillac Place
3030 West Grand Blvd., Suite 10-200
Detroit, Michigan 48202

THOMAS KEAN ABBOTT
IN PRO SE Defendant
Southern Michigan Correctional
Facility 4010 Cooper Street
Jackson, Michigan 49201

SC No: 120802 120803

COA No: 223567

Clinton CC:

97-008368-CZ

PREPAIRED BY: Ronald Joseph Bohm
Paralegal Assistant
4010 Cooper Street
Jackson, Michigan 49201



STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant

V.

THOMAS K. Abbott,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

SC No. 120802
COA No. 223567
Clinton CC No. 97-008368-CZ

**OPPOSITION TO ATTORNEY GENERALS
BRIEF ON APPEAL**

Now Comes Defendant-Appellee, proceedings as his own attorney in propria persona, pursuant to Michigan Constitution Article 1 § 13 [1963] and moves this Honorable Court to grant leave to Cross Appeal pursuant to MCR 7.302(C); MCR 7.306 and 7.309 and Order granting Douglas R. Roberts, State Treasurer order dated April 30, 2002, for the following reasons:

1. Defendant [hereinafter Mr. Abbott] was employed 29 years with General Motors Corporation from 1964 through 1993.

2. Mr. Abbott retired from General Motors in March of 1993 and received full pension of approximately \$ 1, 500.00 per month.

3. On March 25, 1996 Mr. Abbott was sentenced to the jurisdiction of the Department of Corrections for 30 years.

4. State Treasurer, Douglas R. Roberts, filed a complaint on January 13, 1997 in Clinton Circuit Court, seeking recovery of expenses incurred for the cost of care of Mr. Abbott during his incarceration.

5. The action was brought pursuant to MCL 800.401 et. seq.; MSA 28.1701 et. seq., the State Correctional reimbursement Facility Act (SCFRA).

6. On January 24, 1997 Mr. Abbott made an inadequate response to the complaint, due to his ignorance in the law and lack of legal material (Title 29 of the USC) in this area of law/

7. On March 10, 1997, Judge Randy L. Tahvonen, Circuit Judge, entered a "Final Order" naming the warden as receiver of Mr. Abbott's retirement pension proceeds and order the pension check into the prison account of Mr. Abbott for reimbursement for expenses associated with his imprisonment.

8. The funds from the pension check was to be disbursed as follows.

- a) The first \$20.00 to Mr. Abbott, of the remainder;
- b) 33% of the State of Michigan;
- c) 67% to Mr. abbott's spouse, Joann Abbott.

9. On January 23, 1998, Mr. Abbott erroneously filed a writ of mandamus, in essence, requesting the court to cease assignment of his retirement benefits, pursuant to a recently decided case out of the Eastern District Federal Court of Michigan, **Roberts v. Baugh, 986 F. Supp 1074 [E.D. Mich 1997](Zatkoff, J)**

10. On January 28, 1998, Judge Tahvonen considered the writ of mandamus filed by Mr. Abbott to be a motion for reconsideration and denied the motion on the grounds that, "[a]ny defenses or counterclaims Mr. Abbott may have had as to the state's claim could have and should have been raised in response to the initial proceedings."

11. Mr. Abbott contends that his retirement pension is protected by federal law under Employee Retirement Income Security Act (ERISA) 29 USC 514(a), 1144(a)-(b), and preempt assignability under the State Corrections

Facility Reimbursement Act (SCFRA) MCL 800.401 et. seq; MSA 28.1701 et seq.

12. Section 514(a) of ERISA preempts "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan." Section 514(c).

13. Where funds are paid under terms of ERISA plan as income during retirement years, ERISA prohibits their alienation. 1974 § 206(d)(1), 29 USCA § 1056((d)(1). **U.S. v. Smith**, 47 F3d 681 (1995).

14. State law theories of recovery under SCFRA, relating to retirement benefits, are preempted by ERISA unless they fall within the statutes savings clause. See **Pilot Life Ins. Co v. Dedeaux**, 481 US 41; 107 S Ct 1549; 95 L Ed 2d 39 (1987), **Metropolitan Life Insurance Co. v. Taylor**, 481 US 58; 107 S Ct 1542; 995 L Ed 2d 55 (1987), **Daniel v. Eaton** 839 F2d 263 (6th Cir 1988).

15. In order to fall within the savings clause and thereby avoid preemption, SCFRA must pass a two-step test establish by the Supreme Court. First, SCFRA must be found to "regulate insurance", to wit: (a) have the effect of transferring or spreading a policyholder's risk; (b) be an integral part of the policy relationship between the insurer and insured; and (c) be limited to entities within the insurance industry. **Pilot Life Ins. Co.**, 481 US at 48-49; 107 S Ct at 1553-54; 95 L ed 2d at 48. Second, in order to fall within the saving clause the statute must be found not to conflict with enforcement provisions of ERISA Id. 95 L Ed 2d at 50.

16. As evident from the language of SCFRA, it does not operate to "regulate insurance" and surely runs afoul of ERISA enforcement provisions, and therefore, is preempted statutorily by ERISA from alienating retirement benefits from Mr. Abbott.

17. The United State Supreme Court also found that it is not

"appropriate to approve and generalized equitable exception either for employee malfeasance or for criminal misconduct-to ERISA'S prohibition on the assignment or alienation of pension benefits." Guidry v. Sheet Metal Worker Nat'l Pension Fund, 493 US 365, 376; 110 S Ct 680, 687; 107 L.Ed. 2d 782, 795 (1990)

18. The Guidry Court when on to note:

"As a general matter, courts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory test. The creation of such exceptions, in our view, would be especially problematic in the context of an antigarnishment provision. Such a provision acts, by definition to hinder the collection of a lawful debt. A restriction on garnishment therefore can be defended only on the view that the effectuation of certain broad social policies sometimes takes precedence over the desire to do equity between particular parties. It makes little sense to adopt such a policy and then to refuse enforcement whenever enforcement appears inequitable. A Court attempting to carve out an exception that would not swallow the rule would be forced to determine whether application of the rule in particular circumstance would be "especially inequitable" inequitable. The impracticability of defining such a standard reinforces our conclusion that the identification of any exception should be left to congress Id. 107 L.Ed 2d at 795 (Emphasis added).

19. This Court may feel compelled to relieve tax payers of expenditures for upkeep of convicted criminals who can financially relieve tax payers of this burden, however, mandates of the U.S. Supreme Court dictates "any exception should be left to congress."

- A) This Honorable Court **shall** affirm the Court of Appeals findings.
- B) Order the trial Court to immediately suspend further alienation of his retirement pension;
- C) To grant further relief as this Court deems proper.

Respectfully submitted,

7-17-02
Date executed:

Thomas K. Abbott
THOMAS K ABBOTT # 248677

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ARGUMENT:

ALIENATION OF DEFENDANT'S RETIREMENT PENSION PURSUANT TO THE STATE CORRECTIONAL FACILITY REIMBURSEMENT ACT (SCFRA), VIOLATES FEDERAL STATUTORY PROHIBITION ON ASSIGNMENT OR ALIENATION OF PENSION BENEFITS IMPOSED BY THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA).....	3
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APPENDIX

- A. **Exhibit** - Summon and Complaint (January 13, 1997)
- B. **Exhibit** _ Order to Show Cause (January 13, 1997)
- C. **Exhibit** - Defendant's Response to Complaint (January 24, 1997)
- D. **Exhibit** - Mandatory Legal Material for Prison system;
- E. **Exhibit** - Court Order (March 10, 1997)
- F. **Exhibit** - Lower Court's Final Order (March 10 1997)
- G. **Exhibit** - Opinion denying Writ (Court consider reconsideration Motion.
- H. **Exhibit** - Order denying motion for consideration (January 28, 1997)
- I. **Exhibit** _ Court of Appeal Opinion (December 4, 1998)
- J. **Exhibit** - Michigan Supreme Court remand Order (November 9, 1999)
- K. **Exhibit** - Michigan Court of Appeals order reversing. (December 28, 2001
- L. **Exhibit** - Michigan Supreme Court Granting leave to Appeal (April 30, 2002)

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STATEMENT OF QUESTION PRESENTED

DOES THE ALIENATION OF DEFENDANT'S RETIREMENT PENSION, PURSUANT TO THE STATE CORRECTIONAL FACILITY REIMBURSEMENT ACT (SCFRA), VIOLATES FEDERAL STATUTORY PROHIBITION ON ASSIGNMENT OR ALIENATION OF PENSION BENEFITS IMPOSED BY THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA)

Defendant answer "Yes"

Trial Court Answer is "No"

Court of Appeals answer is "Yes"

JURISDICTIONAL STATEMENT

This is a matter first impression in Michigan. Further, it appears no other jurisdiction has addressed the issue. Defendant-Appellee believes this Court should grant the Application & Opposition for Leave to Cross Appeal pursuant to MCR 7.302(B) MCR 7.306 and MCR 7.309, because each of the following grounds is present, any one of which would warrant this court's review. See statement of facts & Brief in support.

STATEMENT OF FACTS

Defendant [hereafter Mr. Abbott] was employed 29 years with General Motors Corporation from 1964 through 1993. Mr. Abbott retired from General Motors Corporation in March of 1993 and received full retirement pension of approximately \$1,500.00 per month.

On March 25, 1996, Mr. abbott was convicted for a felony offense and sentenced to the jurisdiction of the Department of corrections for 30 years.

State Treasurer, Douglas B. Roberts, filed a Complaint on January 13, 1997 in Clinton Circuit Court, seeking recovery of expense incurred for the cost of care of Mr. abbott during his incarceration. **(Exhibit A)** The action was brought pursuant to the State Correctional Facility Reimbursement Act (SCFRA), MCL 800.401 et. seq; MSA 28.1701 et. seq.

Also, on January 13, 1997, Judge Randy L. Tahvonen signed a show cause order as to why the plaintiff's order should not be entered appropriating and applying said Defendant's assets to reimburse the State of Michigan..."**(Exhibit B)**

On January 24, 1997, Mr. Abbott, made an inadequate response to the complaint, **(Exhibit C)** due to his ignorance in the law, lack of legal material (Title 29 of the USC) in this area of law in the prison system, **(Exhibit D)** and due to transfers of the few seasoned paralegals with knowledge of removing state case to federal courts, Mr. Abbott was left without assistance.

On March 10, 1997, Judge Randy L. Tahvonen, Circuit Judge entered an order directing General Motors send Mr. abbott's pension proceeds to his prison address. **(Exhibit E)**. A "Final Order" was entered the same day

naming the warden as receiver of Mr. Abbott's retirement pension proceeds and ordered the pension check into the prison account of Mr. Abbott for reimbursement for expense associated with his imprisonment. The funds from the pension check was to be disbursed as follows:

- a) The first \$20.00 to Mr. Abbott, of the remainder;
- b) 33% to the State of Michigan;
- c) 67% to Mr. Abbott's spouse, Joann Abbott.

See **Exhibit F.**)

On January 23, 1998, Mr. Abbott erroneously filed a writ of mandamus, in essence, requesting the court to cease assignment of his retirement benefits, pursuant to a recently decided case out of the Eastern District Federal Court of Michigan, **Roberts v Baugh** 986 F.Supp 1074 [E.D. Mich 1997] (Zatkoff, J) (**Exhibit G**).

On January 28, 1998, Judge Tahvonen considered the Writ of mandamus filed by Mr. abbott to be a motion for reconsideration and denied the motion on the grounds that, "[a]ny defenses or counterclaims Mr. abbott may have had as to the State's claim could have and should have been raised in response to the initial proceedings." (**Exhibit H**).

Mr. Abbott appeals seeking suspension of SCFRA's alienation of his retirement benefits, alternatively, Mr. Abbott request a remand to the trial court for redress of the issue.

A R G U M E N T

ALIENATION OF DEFENDANT'S RETIREMENT PENSION PURSUANT TO THE STATE CORRECTIONAL FACILITY REIMBURSEMENT ACT (SCFRA), VIOLATES FEDERAL STATUTORY PROHIBITION ON ASSIGNMENT OR ALIENATION OF PENSION BENEFITS IMPOSED BY THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA)

Mr. Abbott was employed with General Motors Corporation from 1964 through 1993. Mr. Abbott retired from General Motors in March of 1993 and received retirement pension of approximately \$1,500.00 pre month.

Mrs. Joann Abbott has been married 37 years to Mr. abbott and is a plan participant of Mr. abbott's retirement pension. She was the receiver of the pension checks through the Auto Body Credit Union. She was a homemaker and mother of three children, now all grown. She must now subsidize her income for the partial lost of her pension check due to Mr. Abbotts criminal conviction and incarceration, and subsequent court order for reimbursement to the state for Mr. Abbott's expenses.

On March 25, 1996, Mr. Abbott was convicted and sentenced to the jurisdiction of the Department of Correction for 30 years. State Treasurer, Douglas B. Roberts, filed a Complaint seeking recovery of expenses incurred for the cost of care of Mr. Abbott during his incarceration (**Exhibit A**). The action was brought pursuant to the State Correctional Facility Reimbursement Act (SCFRA), MCL 800.401 et. seq.; MSA 28.1701 et. seq.

On March 10, 1997, Judge Randy L. Rahvonen, Circuit Judge, entered an order directing General Motors send Mr. Abbott's pension proceeds to his prison address. (**Exhibit E**). A "Final Order" was entered the same day naming the Warden as receiver of Mr. Abbott's retirement pension proceeds and order the pension check into the prison account of Mr. Abbott for

reimbursement for expenses associated with his imprisonment. See (**Exhibit F**).

On January 23, 1998, Mr. Abbott erroneously file a writ of mandamus, in essence, requesting the court to cease assignment of his retirement benefits, pursuant to a recently decided case out of the Eastern District Court of Michigan, **Roberts v. Baugh** File No. 97-70004, (Zatkoff, J.).(**Exhibit G**). Judge Tahvonen considered the writ of mandamus to be a motion for reconsideration and denied the motion . (**Exhibit H**).

The standard of review is whether the trial court's factual finding was "clearly erroneous." **Attorney General v. Blewer Co.**, 140 Mich App 1; 363 NW2d 712 (1985); **Beason v Beason** 435 Mich 791; 460 NW2d (1989). The appellant court may apply the denovo standard and exercise its own discretion under MCR 2.613(C) and this is consistent with Michigan Rule of Evidence 103(d).

Mr. Abbott contents that his retirement pension is protected by federal law under Employee Retirement Income Security Act (**ERISA**), 29 USC 514(a), 1144(a)-(b), and preempt assignability under the State Corrections Facility Reimbursement Act (SCFRA), MCL 800.401 et seq; MSA 28.1701 et seq.

That SCFRA was enacted to establish procedures for reimbursement to the state for expenses incurred in the housing of prisoners. **State Treasurer v. Cuellar**, 190 Mich app 464, 467; 476 NW2d 644 (1991). It provides that not more than ninety percent of a prisoner's "assets" may be recovered in an action by the state for prison reimbursement. MCL 800.403; MSA 28.1703. The SCFRA defines assets as "property, tangible, or intangible, real or personal, belonging to or due a prisoner. . including . . . retirement benefits. . ." MCL 800.401a(a); MSA 28.1701(1)(a).

Section 514(a) of ERISA preempts "any and all state laws insofar as

they may now or hereafter relate to any employee benefit plan." Section 514(c). Under the quoted statute and regulations, an employee's accrued benefits under a qualified plan may not be reached by judicial process in aid of a third-party creditor. **General Motors Corporation v. Buha** 623 F2d 455 (6th Cir 1980). Where funds are paid under terms of ERISA plan as income during retirement years, ERISA prohibits their alienation. 29 USC § 206(d)(1), 29 USCA § 1056(d)(1). See **U.S. v. Smith** 47 F3d 681 (1995).

ERISA is no less onerous than the Public School Employees Retirement Act (PSERA), MCL 38.1301 et seq; MSA 15.893(111) et seq, where both are specific in nature. In **State Treasurer v. Schuster**, 215 Mich App 347; 547 NW2d 332 (1996), this Court held that the Plaintiff could not seek reimbursement from defendant's retirement allowance. This Court reasoned that PSERA was controlling, because it was more specific than SCFRA. The PSERA deals specifically with a public school employee's retirement allowance and protects it from legal process. **Schuster**, supra, at 353. In the context of that case, SCFRA was held to be more general in scope. The reasoning was that it deals with the ability of the state to seek reimbursement for cost from a prisoner's property in general. *Id.* at 353.

ERISA provides no less protection act than PSERA. 29 USC Section 1144(b) provides that the preemption provisions "shall not apply to any generally application criminal law of a State..." Criminal law exemption to preemption clause of this section cannot be interpreted to permit implied civil action or remedies which otherwise would be preempted. **Calhoon v Bonnabel**, 560 F Supp 101 (1982). 29 USC Section 1144(a) provides that ERISA "Shall supercede any and all State laws insofar as they not or hereafter relate to any employee benefits plan." State criminal laws aimed

specifically at employees benefit plan are superseded by this chapter. **Trustee of Sheet Metal Worker' international Associations v. Aberdeen Blowers and Sheet Metal Workers, Inc.** 559 FS 561 (1983)

State law theories of recovery under SCFRA, relating to retirement benefits, are preempted by ETISA unless they fall within the statutes savings clause. See **Pilot Life Ins. Co. v. Debeaux**, 481 US 41; 107 S Ct 1549; 95 L ed 2d 39 (1987), **Metropolitan Life Insurance Co. v. Taylor**, 481 US 58; 107 S Ct 1542; 95 L ed 2d 55 (1987), **Daniel v. Eaton** 839 F2d 263 (6th Cir 1988).

In order to fall within the saving clause and thereby avoid preemption, SCFRA must pass a two-step test establish by the Supreme Court. First, SCFRA must be found to "regulate insurance", to wit: (a) have the effect of transferring or spreading a policyholder's risk; (b) be an integral part of the policy relationship between the insurer and insured; and (c) be limited to entitled within the insurance industry. **Pilot Life Ins. Co.**, 481 US at 48-49; 107 S Ct at 1553-54; 95 L ed 2d at 48. Second, in order to fall within the saving clause the statute must be found not to conflict with enforcement provisions of ERISA, Id. 95 L ed 2d at 50.

As evident from the language of SCFRA, it does not operate to "regulate insurance" and surely run afoul of ERISA from alienating retirement benefits from Mr. abbott. The primary goal of Judicial interpretation of statute is to ascertain and give full effect to the intent of the legislature. **Farrington v. Total Petroleum, Inc.**, 442 Mich 201, 212; 501 NW 2d 76 (1993). In the federal Court system, the United States Supreme Court stated: "It is an elementary tenet of statutory construction that "[w]here there is no clear intention otherwise, a

specific statute will not be controlled or nullified by a general one . . ." **Morton v Mancari**, 417 US 535, 550-551; 41 L Ed 2d 290; 94 S Ct 2474 (1974)

The United States Supreme Court also found that it is not "appropriate to approve any generalized equitable exception-either for employee malfeasance or for criminal misconduct-to ERISA'S prohibition on the assignment or alienation of pension benefits." **Guidry v. Sheet Metal Workers Nat'l Pension Funds**, 493 US 365, 376; 110 S Ct 680 S Ct 680, 687; 107 L Ed 2d 782, 795 (1990).

The **Guidry** Court eloquently noted:

"As a general matter, courts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory test. The creation of such exceptions, in our view would be especially problematic in the context of an antigarnishment provision. Such a provision acts, by definition to hinder the collection of a lawful debt. A restriction on garnishment therefore can be defended only on the view that the effectuation of certain broad social policies sometimes takes precedence over the desire to do equity between particular parties. It make little sense to adopt such a policy and then to refuse enforcement whenever enforcement appears inequitable. A court attempting to carve out an exception that would not swallow the rule in particular circumstances would be "especially" inequitable. The impracticabilty of defining such a standard reinforces our conclusion that the identification of any exception should be left to congress." Id. 107 L Ed 2d at 7995. (Emphasis added).

ERISA like PSERA was established to protect retirement benefits for all its participants under the plan. Also, both statutes carved out provision for spouses child alimony, and domestic cases for "collection of a lawful debt." It's a rare incident to protection of those few who are incarcerated after retirement. However, Mrs. Abbott should not be penalized for indiscretions of Mr. abbott. As the **GUIDRY** Court recognized " A restriction on garnishment therefore can be defended only on the view

that the effecuation of certain broad social policies sometimes take precedence over the desire to do equity between particular parties." In this case, precedence should be given to Mr. Abbott.

This Court may feel compelled to relieve tax payers of cost for upkeep of convicted criminals who can financially relieve tax payers of this burden, however, mandates of the U.S. supreme Court dictates "any exception should be left to congress."


Mr. Abbott do not believe that congressional intent would be effecuated by reading SCFRA'S general reference to "retirement benefits" as overriding an express, specific congressional directive that pension benefits not be subject to assignment or alienation. It is within this Court's purview and prerogative to rectify this wrong.

RELIEF SOUGHT

WHEREFORE for all the foregoing reasons, Mr. Abbott request this Court to:

- A) This Honorable Court **Shall** affirm the Court of Appeals findings.
- B) Order the trial Court to immediately suspend further alienation of his retirement pension;
- C) To grant further relief as this Court deems proper/

Respectfully submitted,


THOMAS KEAN ABBOTT
INMATE No. 248677
SOUTHERN MICHIGAN
CORRECTIONAL FACILITY
4010 COOPER STREET
JACKSON, MICHIGAN 49201

7-17-02
Date executed:

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant

V.

THOMAS K. Abbott,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

SC No. 120802
COA No. 223567
Clinton CC No. 97-008368-CZ

STATE OF MICHIGAN)

ss

AFFIDAVIT OF VERIFICATION

COUNTY OF JACKSON)

I, **Thomas Kean Abbott**, first being duly sworn deposes and says that he has read the statement of facts, Brief in opposition to Assistance Attorney General Brief in support, and known the content therein to be true and correct to the best of his knowledge and belief.

Furthermore affiant sayth not.

Signed:



THOMAS KEAN ABBOTT
INMATE No. 248677
SOUTHERN MICHIGAN
CORRECTIONAL FACILITY
4010 COOPER STREET
JACKSON, MICHIGAN 49201

7-17-02
Date executed:

MCR 2.114(A)(2)(b) I, declare that under the pain and penalty of perjury that the foregoing statements is true to the best of my knowledge and belief.

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant,

v

THOMAS K. ABBOTT,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

SC No: 120802

COA No: 223567

Clinton CC: 97-008368-CZ

A P P E N D I X

- A. Summon and Complaint (January 13, 1997)
- B. Order to Show Cause (January 13, 1997)
- C. Defendant's Response to Complaint (January 24, 1997)
- D. Mandatory Legal Material for Prison System;
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STATE OF MICHIGAN
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AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

SC No: 120802

COA No: 223567

Clinton CC:

97-008368-CZ

E X H I B I T

"A"

Attached hereunto

STATE OF MICHIGAN
JUDICIAL DISTRICT
29TH JUDICIAL CIRCUIT

SUMMONS AND COMPLAINT

CASE NO.

97-97-8368 VZ

Court address:

Clinton County Court, 100 E. State Street, St. Johns, MI 48879

Court telephone no.

Plaintiff name(s), address(es), and telephone no(s).

DOUGLAS B. ROBERTS, STATE TREAS.
1200 Sixth Street, Suite 1800
Detroit, Michigan 48226
(313) 256-2352

v

Defendant name(s), address(es), and telephone no(s).

THOMAS K. ABBOTT, #248677
STATE PRISON OF SOUTHERN MI
CENTRAL COMPLEX
4000 COOPER STREET
JACKSON, MI 49201

Plaintiff attorney, bar no., address, and telephone no.

DANIEL M. LEVY (P39152)
ASSISTANT ATTORNEY GENERAL
(same as above)

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. YOU HAVE 21 DAYS after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued 1-13-97	This summons expires 4-14-97	Court clerk <i>Diane Zuber</i>
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*This summons is invalid unless served on or before its expiration date.

☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ . The docket number and assigned judge are:

Docket no.	Judge	Bar no.

The action ☐ remains ☐ is no longer pending.

VENUE

Plaintiff(s) residence (include city, township, or village)	Defendant(s) residence (include city, township, or village)
Place where action arose or business conducted	

I declare that the complaint information above and attached is true to the best of my information, knowledge, and belief.

Date
Jan. 9, 1997

Signature of attorney/plaintiff

Daniel M. Levy (P39152)

COMPLAINT IS STATED ON ATTACHED PAGES. EXHIBITS ARE ATTACHED IF REQUIRED BY COURT RULE.
MC 01 (6/95) SUMMONS AND COMPLAINT DEFENDANT

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 29TH JUDICIAL CIRCUIT
CLINTON COUNTY

DOUGLAS B. ROBERTS, STATE TREASURER,

Plaintiff,

Case No. 97- 8368 - CZ

v

Hon.

THOMAS K. ABBOTT, # 248677,
AUTO BODY CREDIT UNION and
JOANN ABBOTT,

Defendants.

Daniel M. Levy (P39152)
Assistant Attorney General
1200 Sixth Street, Suite 1800
Detroit, Michigan 48226
(313) 256-2352
Fax: (313) 256-1653

There is no other civil action brought by these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge.

COMPLAINT

Plaintiff says:

1. Plaintiff is the head of the Michigan Department of Treasury with responsibility for the collection of monies, claims and accounts due to the State of Michigan or any department or agency thereof.
2. The Michigan Department of Corrections is a department of the State of Michigan.
3. The Defendant, Thomas K. Abbott is a state prisoner housed at the State Prison of Southern Michigan-Central Complex, 4000 Cooper Street, Jackson, MI 49201 and is subject to the continuing jurisdiction of the Michigan Department of Corrections, having been sentenced to its jurisdiction on March 25, 1996, by a Clinton County Circuit Court Judge.

4. The Defendant Auto Body Credit Union, is a financial institution located and doing business in Michigan.

5. That Defendant Joann Abbott is the wife of Defendant Thomas K. Abbott's.

6. This action is brought pursuant to the State Correctional Facility Reimbursement Act (SCFRA), MCL 800.401 et seq; MSA 28.1701 et seq as amended.

7. The State of Michigan has expended a sum of money for the cost of care of Defendant, Thomas K. Abbott, and will continue to expend same during the entire period said Defendant is confined in a State Correctional Facility. An affidavit establishing these costs, as provided by the statute (MCL 800.406(2)), will be filed with the Court prior to the Show Cause hearing.

8. Plaintiff has knowledge that Defendant Thomas K. Abbott has, or is about to receive, assets in the form of a monthly pension from General Motors Corporation in the amount of approximately \$1500.00 per month. Said checks are being mailed to Defendant Auto Body Credit Union, 111 S. Waverly Road, Lansing, MI 48917, where Defendant Abbott has account(s).

9. Plaintiff has knowledge that Defendant Joann Abbott may claim an interest in the assets mentioned in paragraph 8.

10. Plaintiff is aware of no other assets belonging to or possessed by Defendant Thomas K. Abbott other than those mentioned above.

11. Plaintiff will suffer immediate and irreparable injury, loss, or damage unless a receiver is appointed to protect and maintain the assets of Defendant Thomas K. Abbott, as extensive experience with prisoners in State correctional facilities has shown that such persons rarely have assets to reimburse the State for the cost of incarceration, that such assets have generally been removed beyond the reach of Plaintiff upon notice of suit, and that Defendant Thomas K. Abbott is possessed of no known assets other than those assets which are the subject matter of this cause. Plaintiff will have no legal remedy absent the appointment of a receiver

to prevent Defendant Tho. ; K. Abbott from transferring fun from his account, or from preventing him from disposing of these assets, pending the outcome of this action.

13. That pursuant to the provisions of MCL 800.404(a)(2); MSA 28.1705(2), "To protect and maintain assets pending resolution of an action under this Act, the court, upon request, may appoint a receiver." (See also Treasury Dep't v Turner, 110 Mich App 228, 312 NW2d 418 (1981)).

14. That the Warden of the institution in which Defendant is housed, currently the State Prison of Southern Michigan - Central Complex, is a fit and proper person to be named receiver of the funds in the prison account(s) of Defendant Thomas K. Abbott.

15. That Defendant Auto Body Credit Union is a fit and proper entity to be named receiver of the funds in its account(s) in the name of Thomas K. Abbott.

WHEREFORE, Plaintiff respectfully prays that:

(a) An Order to Show Cause be issued by this Honorable Court directing Defendant Thomas K. Abbott to show cause why an Order should not be entered appropriating and applying his assets toward reimbursing the State for expenses incurred, and to be incurred, by the State for the cost of care of Defendant Thomas K. Abbott.

(b) This Court enter an Order reimbursing the State for expenses incurred, and to be incurred, for the cost of care of Defendant Thomas K. Abbott.

(c) This Court enter judgment for Plaintiff in the amount of ninety percent (90%) of Defendant Abott's assets, including, but not limited to the above indicated pension proceeds and prison account (not to exceed the actual total costs of his incarceration).

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant,

v

THOMAS K. ABBOTT,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

SC No: 120802

COA No: 223567

Clinton CC:

97-008368-CZ

E X H I B I T

"B"

Attached hereunto

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 29TH JUDICIAL CIRCUIT
CLINTON COUNTY

DOUGLAS B. ROBERTS, STATE TREASURER,

97 - 8368

Plaintiff,

Case No. 97-

CZ

v

Hon. **RANDY L. TAHVONEN**

THOMAS K. ABBOTT, # 248677,
AUTO BODY CREDIT UNION and
JOANN ABBOTT,

Defendants.

Daniel M. Levy (P39152)
Assistant Attorney General
1200 Sixth Street, Suite 1800
Detroit, Michigan 48226
(313) 256-2352
Fax: (313) 256-1653

A TRUE COPY
DIANE ZUKER
CLERK OF CLINTON COUNTY

ORDER TO SHOW CAUSE AND
~~EX PARTE ORDER APPOINTING RECEIVER~~

At a session of said Court, held in the
City of St. Johns, Michigan, Clinton
County, Michigan on

13 January 97

PRESENT: Hon. RANDY L. TAHVONEN

Circuit Court Judge

Plaintiff having requested an Order to Show Cause and an Ex Parte Order
Appointing Receiver.

IT IS ORDERED THAT:

1. Defendant Thomas K. Abbott shall appear or otherwise respond on the
10th day of ~~February~~ MARCH, 1997, at 1:30 o'clock appear before the
Honorable RANDY L. TAHVONEN, Circuit Court Judge, and show

cause why an Order should not be entered appropriating and applying said Defendant's assets to reimburse the State of Michigan for the cost of Defendant Thomas K. Abbott's confinement in a state correctional facility.

2. This Order shall be served on Defendant Abbott and the other parties at least 30 days prior to the hearing set forth above.

3. ~~Defendant Thomas K. Abbott shall direct General Motors that any pension proceeds due him shall, until further order of this Court, be made payable to him and sent to him at the State Prison of Southern Michigan - Central Complex, 4000 Cooper Street, Jackson, MI 49201.~~

4. ~~Should Defendant Abbott refuse, or for any other reason fail, to comply with the provisions of paragraph 3 above, the State may secure an Order from this Court changing Defendant Abbott's address of record with General Motors and directing General Motors to distribute the funds as described in paragraph 3 above.~~

5. ~~Defendant Auto Body Credit Union is appointed receiver of the funds on deposit in Defendant Abbott's account(s) at that institution. Receivership is for the purpose of placing a hold (freeze) on said funds until further order of this Court.~~

6. ~~The Warden of the State Prison of Southern Michigan - Central Complex (or successor) is appointed as receiver of the funds on deposit in Defendant Abbott's prison account(s). Receivership is for the purpose of placing a hold (freeze) on said funds until further order of this Court.~~

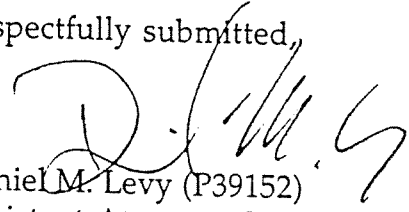
7. ~~That Defendant Joann Abbott not dispose, remove or transfer any assets in the name of Thomas K. Abbott pending further order of this court.~~

S/ RANDY L. TAHVONEN

Circuit Court Judge

(d) This court enters an Order that Defendant Joann Abbott not remove, transfer, or dispose of any assets in Defendant Thomas K. Abbott's name.

Respectfully submitted,



Daniel M. Levy (P39152)
Assistant Attorney General
1200 Sixth Street, Ste. 1800
Detroit, Michigan 48226
(313) 256-2352

Dated: January 8, 1997

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant,

v

SC No: 120802

COA No: 223567

Clinton CC: 97-008368-CZ

THOMAS K. ABBOTT,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

E X H I B I T

"C"

Attached hereunto

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF CLINTON
29TH JUDICIAL CIR.

DOUGLAS B. ROBERTS, STATE TREASURER,

Plaintiff,

CASE No. 97-8368-CZ

v.

Hon: RANDY L. TAHVONEN

THOMAS KEAN ABBOTT, #248677
AUTO BODY CREDIT UNION and
JOANN ABBOTT,

MOTION TO STRIKE PLEADING
MCR 2.115(B)

Defendants

DANIEL M. LEVEY (P39152)
ASSISTANT ATTORNEY GENERAL
1200 SIXTH STREET, SUITE 1800
DETROIT, MICHIGAN 48226

THOMAS KEAN ABBOTT
DEFENDANT IN PRO PER
4000 COOPER STREET BOX 7518
JACKSON MICHIGAN 49201-7518

COUNTER CLAIM

NOW COMES THOMAS KEAN ABBOTT in propria persona under the authority of Article 1 § 13 of the Michigan Constitution [1963]. The Defendant demands a Jury Trial and Appointment of Counsel.

Defendant says:

That this Honorable Court lack subject matter Jurisdiction and personal Jurisdiction over the defendants.

1. Defendant neither admits or denies the allegation in paragraph 1, but leads Plaintiff to it proof.

2. The defendant neither admit nor denied the allegation in paragraph 2 but leads the plaintiff's to their proofs.

3. Defendant admit that he is house in Jackson Prison, Jackson County Michigan by means of a illegal conviction raising out of the means of fraud & Perjury transaction from Clinton County.

4. Paragraph 4, the complaint lack subject matter Jurisdiction over

Auto Body Credit Union. The Credit Union is located in Ingham County and is not within Clinton County.

6. The defendant neither admit or denies paragraph 6 stated therein but leads the complainant to it proofs.

7. The defenant neither admit nor denied, but leads the complainant to their proofs.

8. Defendant neither admit or denied paragraph 8, but leads the complainant to there proofs

9. The defendant neither admit or denies paragraph 9, Paragraph 8 thru 9 is community property

10. Defendant neither admit nor denies pragraph 9 stated therein, but leads the complainant to there proofs.

11. The the Plaintiff-complaintiff, attempts fraud by deceit, by attempting to use this Court as a Point of Jurisdiction. Pargraph 11, is neither admitted or denied by the defendant.

12. No paragraph does not exsit

13. The Court lack Subject Matter Jurisdiction and Personal Jurisdiction.

14. This Court Lack Subject Matter Jurisdiction.

15. This Court Lack Subject Matter Jurisdiction over Auto Body Credit union, which is located in Ingham County Seat.

15. Paragraph 15(a)(b)(c) (d). This Court lacks subject matter Jurisdiction over the defendant. The defendant claim filed in Michigan Court Of Appeals is claim by Fraud and deceit and knowing use of Perjury testimony to gain access to the District & Circuit Court for the County Of Clinton County Michigan.

Jan 24th, 1997
Date Executed

Accordingly

Thomas Kevin Allett

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant,

v

THOMAS K. ABBOTT,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

SC No: 120802
COA No: 223567
Clinton CC:

97-008368-CZ

E X H I B I T

"D"

Attached hereunto

REQUIRED COLLECTION

- D. All law libraries shall contain the volumes listed in Attachment A entitled "Minimum Collection for Michigan Prison Law Libraries". State appropriated funds must be used to purchase these items, but shall not be used to purchase any other items. Special attention must be given to maintaining the required update services for multi-volume sets, as legal materials are of limited value if they are not kept current through these update services. Also, all materials shall be kept current as new policies, rules and procedures are issued. Volumes or updates on this list which are lost, defaced, stolen or otherwise destroyed must be promptly replaced using state-appropriated funds.
- E. At least every six months, each law library shall be inventoried to identify required materials which are missing or mutilated. The inventory format shall include documentation that each required volume was inventoried and if a replacement is needed, that the replacement was ordered and received. The inventory shall be retained by the librarian for at least three years. The inventory may be needed for litigation purposes to provide documentation that missing or mutilated required books were replaced promptly.
- F. Additional copies of required materials must be available if the demand for those materials cannot be met with a single copy. Institutions with segregation units or Level I units where material must be delivered to prisoners are more likely to need more than one copy of popular items. Additional copies of required items shall be paid for using State funds.
- G. The administrative rules, policy directives, operating procedures and the Hearings Handbook (Items 11-15 under General Materials on Attachment A) shall be made available to prisoners in camps where there is no law library. They shall be updated and kept in a location which is convenient for prisoner use, as determined by the Camp Supervisor.

SUPPLEMENTING OF COLLECTION

- H. Prisoner benefit funds may be used to purchase law library items in addition to those on the required list, at the discretion of the administrators of that fund, but shall not be used for items on the required list. Attachment B, entitled "Suggested Supplements to Minimum Collection", may be used as guidance in determining what to purchase with prisoner benefit funds.
- I. At times, law firms and other outside organizations will have law books which they wish to donate to an institutional law library. Such donations may be accepted if it is determined by the librarian that the items will be useful additions to the collection. All donated items must be screened for contraband.
- J. All librarians shall establish relationships with libraries outside the Department, pursuant to PD 05.03.110, "Institutional Library Services" to enable prisoners to have access to additional legal research materials through inter-library loans, when available, or to purchase photocopies of materials not available in the institutional law library.

ATTACHMENT A (CONTINUED)

FEDERAL MATERIALS1. United States Code Annotated*

Volumes: Constitution volumes

Title 18 (All volumes)

Title 28 (All volumes)

Title 42 (All volumes)

Source: West Publishing Co.

or

United States Code Service

Volumes: Equivalents to USCA Volumes Required

Source: Lawyers Cooperative Publishing Co.

2. Supreme Court Reporter

Volumes: From Vol. 80 (1959) to the present plus subscription to advance sheets

Source: West Publishing Co.

or

United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Volumes: From Vol. 4 (1959) to the present plus subscription to advance sheets

Source: Lawyers Cooperative Publishing Co.

3. Federal Reporter, 2nd Series and Following Editions

Volumes: From Vol. 300 (1962) to the present plus subscription to advance sheets

Source: West Publishing Co.

4. Federal Supplement 2nd and Following Editions

Volumes: From Vol. 200 (1961) to the present plus subscription to advance sheets

Source: West Publishing Co.

5. Federal Practice Digest, 2nd and Following Editions

Volumes: All including subscription to advance sheets

Source: West Publishing Co.

6. Shepard's United States Citations

Volumes: All related to Supreme Court reporter which is chosen (see item #2 above) - plus subscription to advance sheets for those volumes

Source: Shepard's/McGraw-Hill, Inc.

7. Shepard's Federal Citations

Volumes: All - plus subscription to advance sheets

Source: Shepard's/McGraw-Hill, Inc.

8. Wright - Federal Practice and Procedure*

Volumes: Vols. 1, 2, 3 and 3A (Criminal)

Source: West Publishing Co.

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant,

v

THOMAS K. ABBOTT,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

SC No: 120802

COA No: 223567

Clinton CC: 97-008368-CZ

E X H I B I T

"E"

Attached hereunto

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 29TH JUDICIAL CIRCUIT
CLINTON COUNTY

DOUGLAS B. ROBERTS, STATE TREASURER,

Plaintiff,

Case No. 97-8368-CZ

v

Honorable Randy Tahvonen

THOMAS K. ABBOTT, # 248677,
AUTO BODY CREDIT UNION and
JOANN ABBOTT,

Defendants.

A TRUE COPY

DIANE ZUKER
CLERK OF CLINTON COUNTY

FRANK J. KELLEY
Attorney General

Daniel M. Levy (P39152)
Assistant Attorney General
1200 Sixth Street, Suite 1800
Detroit, Michigan 48226
(313) 256-2352
Fax: (313) 256-1653
Attorneys for Plaintiff

ORDER

At a session of said Court, held in the City of
St Johns, Clinton County, Michigan on

10 March '97

PRESENT: Hon. RANDY L. TAHVONEN
Court Judge

The Court having reviewed the pleadings of the parties, having been
otherwise fully informed and after due consideration thereof;

IT IS HEREBY ORDERED:

1. General Motors shall send all pension proceeds payable to Thomas K.
Abbott, Social Security number 373-38-8447 to Thomas K. Abbott's new address of
record which is:

State I on of Southern Michigan
Central Complex
4000 Cooper Street
Jackson, MI 49201

2. This address of record may be amended to another address by the Michigan Department of Corrections but shall not otherwise be changed absent further Order of this Court, the filing by Plaintiff of a Satisfaction of Judgment, or agreement of the above captioned parties.

Dated: 10 March 97

S/ RANDY L. TAHVONEN
Honorable Randy L. Tahvonen
Clinton County Circuit Court Judge

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant,

v

SC No: 120802

COA No: 223567

Clinton CC:

97-008368-CZ

THOMAS K. ABBOTT,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

E X H I B I T

"F"

Attached hereunto

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 29TH JUDICIAL CIRCUIT
CLINTON COUNTY

DOUGLAS B. ROBERTS, STATE TREASURER,

Plaintiff,

Case No. 97-8368-CZ

v

Honorable Randy Tahvonen

THOMAS K. ABBOTT, # 248677,
AUTO BODY CREDIT UNION and
JOANN ABBOTT,

Defendants.

A TRUE COPY
DIANE ZUKER
CLERK OF CLINTON COUNTY

FRANK J. KELLEY
Attorney General

Daniel M. Levy (P39152)
Assistant Attorney General
1200 Sixth Street, Suite 1800
Detroit, Michigan 48226
(313) 256-2352
Fax: (313) 256-1653
Attorneys for Plaintiff

ORDER

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St Johns, Clinton County, Michigan on

10 March '97

PRESENT: Hon. PANDY L. TAHVONEN
Court Judge

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Dated: 10 March 97

S/ **RANDY L. TAHVONEN**
Honorable Randy L. Tahvonen
Clinton County Circuit Court Judge

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant,

v

THOMAS K. ABBOTT,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

SC No: 120802

COA No: 223567

Clinton CC: 97-008368-CZ

E X H I B I T

"G"

Attached hereunto

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 29TH JUDICIAL CIRCUIT
CLINTON COUNTY

THOMAS K. ABBOTT, # 248677
AUTO BOEY CREDIT UNION and
JOANN ABBOTT,

Plaintiff's

Case No. 97-8368-CZ

v.

Honorable Randy Tahvonen

DOUGLAS B. ROBERTS, STATE TREASURER,

WRIT OF MANDAMUS

MCL 600.4401(1); MSA 27A §4401

MCR 3.305(A)(B)(C)(D)(E)

Defendant.

Now Comes Thomas Kean Abbott, in propria Persona, under the authority of Michigan Constitution Article 1 § 13, the right to act in propria persona, and to conduct his own cause of action.

Jurisdiction

This Honorable Court Jurisdiction is invest under MCL 660.4401(1); MSA 27A § 4401; MCR 3.305.(A) (B)(2) Venue (C) Cause (D) Answer (E) Exhibit (F) Jury Demand.

1. That the Defendant Douglas B. Robert, State Treasure, brought on a action through fraud and deceit. Defendant through his assistant Attorney General Daniel M. Levy (P39152).

2. Defendant's complaint was file with this Court on or about January 8, 1997. Plaintiff, hereinafter file a respond to the Complaint on or, about January 24, 1997

3. That is Court was well aware that Thomas Kean Abbott, Plaintiff hereinafter, filed a Jury Trial Demand. However this Judge Randy Tahvonen, choose to violate the State Constitution, by way of denying the Plaintiff, Thomas Kean Abbott, his Constitution Right to a trial and Jury was demanded.

4. That this Honorable Court lack subject Jurisdiction and personal Jurisdiction over Thomas Kean Abbott Plaintiff hereinafter.

5. That this Court violated USCA Title 29 § 1036

ARGUMENT

Where Defendant - State Treasure seeks an order to have a prisoner's pension benefits deposited directly into the prisoner's account, so that defendant could be partially reimbursed for the prisoner's incarceration costs, such an order would violate Erisa's anti-alienation provisions.

The prisoner draws pension benefits from plaintiff General Motor Corporation. Defendant seeks partial reimbursement of the prisoner's incarceration costs under MCL § 800.401 Defendant proposes to accomplish this by obtaining an order from this court compelling plaintiff to mail the pension benefits to the prison, where they will be deposited into the prisoner's account and be available to defendant for partial reimbursement.

Under Erisa's anti-alienation provisions benefits under a plan may not be assigned or alienated. These provision apply to both voluntary and involuntary assignments such as garnishment, and to restitution orders.

Defendant argues that no assignment would occur in this case because the funds would be deposited into the prisoner's account, they would not longer be protected by erisa. However, under plaintiff's proposed scheme, defendant would not be voluntarily placing the funds in the account - it would be doing so only by court order, "such an involuntary transfer clearly constitutes an assignment." Therefore; the court will not issue the order plaintiff requests.

Although application of the Anti-Alienation Rule begets an unsettling result in the instant case, this court will not craft an exception to erisa in the absence of congressional direction." Plaintiff should be granted reimbursement of all money taken out of his account from May, 1997 thur the present date, as


following.

May 30, 1997 \$ 527.19
June 03, 1997 \$ 525.38
July 03, 1997 \$ 533.79
August 06, 1997 \$ 527.19
September 09, 1997 \$ 527.19
October 06, 1997 \$ 527.19
November 11, 1997 \$ 533.79
December 12, 1997 \$ 531.98
December 23, 1997 \$154.18
Total Amount Due. \$4,387.88

Plaintiff's hereinafter seek reimbursement in full amount of \$ 4,387.88 and cost and filing fees also seven hours at @ \$35.00 pre hours research and typing. See Robert v Raugh et al (Lawyer Weekly No. 31125 - 12 Pages (Zathoff J.) Eastern District Federal Court Michigan.

Plaintiff hereinafter further sayth not.

Respectfully Submitted:



Thomas Kean Abbott
Register No. 248677
4010 Cooper Street
Jackson, Michigan 49201-7518

Dated: 1-23-1998 1998 A.D.
Executed

MCR 2.114(A)(2)(B) I, declare that under the pain and penalty of perjury that the foregoing statements is true to the best of my knowledge and belief.

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant,

v

THOMAS K. ABBOTT,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

SC No: 120802

COA No: 223567

Clinton CC:

97-008368-CZ

E X H I B I T

"H"

Attached hereunto

S T A T E O F M I C H I G A N

IN THE CIRCUIT COURT FOR THE COUNTY OF CLINTON

Douglas B. Roberts, State Treasurer,

Plaintiff,

v

File No. 97-8368-CZ

Thomas K. Abbott, #248677,
Auto Body Credit Union and
Joann Abbott,

Defendant.

A TRUE COPY
DIVINE ZUKER
CLERK OF CLINTON COUNTY

OPINION AND ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION

At a session of said Court held in the Courthouse
this 28th day of January, 1998 in the Circuit Court
for Clinton County, State of Michigan.

PRESENT: HONORABLE RANDY L. TAHVONEN, Circuit Judge

On March 10, 1997 this Court entered a "Final Order" directing that certain pension proceeds otherwise payable to defendant Thomas K. Abbott be paid to the State of Michigan as reimbursement for expenses associated with his imprisonment by the State Department of Corrections.

On or about January 27, 1998 Mr. Abbott filed with this Court a "Complaint for Writ of Mandamus", a proposed "Counterclaim", and a Summons for issuance by the Clerk.

This Court has reviewed all of those materials and determines them to be a motion for reconsideration of this Court's final order dated March 10, 1997. In both the proposed

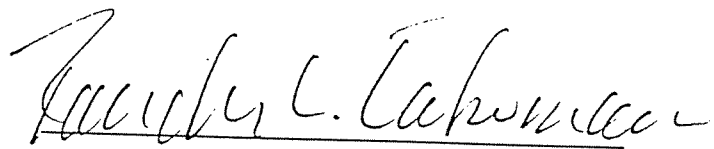
CLINTON COUNTY CLERK
JAN 28 '98

complaint for a writ of mandamus and counterclaim, Mr. Abbott challenges the authority of the Court to enter the order requiring that payments be made from his pension proceeds for reimbursement. That is precisely the issue that was before the Court in connection with the legal proceedings resulting in the March 10, 1997 order. Any defenses or counterclaims Mr. Abbott may have had as to the state's claim could have and should have been raised in response to the initial proceedings. Mr. Abbott offers no reason or justification for his failure to do so on the earlier occasion and his present request for relief is in essence a motion for reconsideration. If a remedy is available to Mr. Abbott from this Court's earlier order, it is by way of application for leave to appeal to the Michigan Court of Appeals from the March 10, 1997 order.

IT IS THEREFORE ORDERED that the defendant's complaint for a writ of mandamus and proposed counterclaim be treated as motions for reconsideration and DENIED. The complaint for writ of mandamus and the counterclaim are DISMISSED.

This writing constitutes both the opinion and order of the Court.

Dated: January 28th, 1998

A handwritten signature in cursive script, reading "Randy L. Tahvonen", written in dark ink.

RANDY L. TAHVONEN, Circuit Judge

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant,

v

THOMAS K. ABBOTT,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

SC No: 120802

COA No: 223567

Clinton CC: 97-008368-CZ

E X H I B I T

"I"

Attached hereunto

Court of Appeals, State of Michigan

ORDER

State Treasurer v Thomas K Abbott

Docket No. 209836

LC No. 97-008368 CZ

Henry William Saad
Presiding Judge

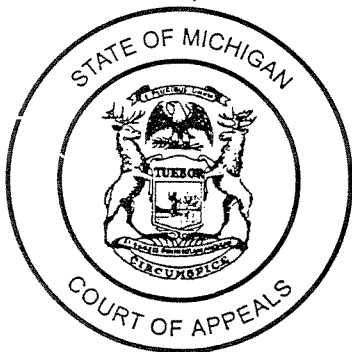
Donald E. Holbrook, Jr.

Richard Allen Griffin
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

The motion for peremptory reversal is DENIED.

The motion for immediate consideration is GRANTED.



A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

DEC 04 1998

Date

A handwritten signature in cursive script, likely belonging to Carl L. Gromek, the Chief Clerk.

Chief Clerk

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant,

v

THOMAS K. ABBOTT,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

SC No: 120802

COA No: 223567

Clinton CC:

97-008368-CZ

E X H I B I T

"J"

Attached hereunto

Order

Entered: November 9, 1999

Michigan Supreme Court
Lansing, Michigan

Elizabeth A. Weaver,
Chief Justice

Michael F. Cavanagh
Marilyn Kelly
Clifford W. Taylor
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

113970

STATE TREASURER,

Plaintiff-Appellee,

v

THOMAS K. ABBOTT,

Defendant-Appellant.

SC: 113970
COA: 209836
Clinton CC: 97-008368-CZ

On order of the Court, the delayed application for leave to appeal the December 4, 1998 decision of the Court of Appeals is considered and, pursuant to MCR 7.302(F)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration as on leave granted.

b1104



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 9, 19 99 Corbin R. Davis

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant,

v

THOMAS K. ABBOTT,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

SC No: 120802

COA No: 223567

Clinton CC:

97-008368-CZ

E X H I B I T

"K"

Attached hereunto

STATE OF MICHIGAN
COURT OF APPEALS

STATE TREASURER,

Plaintiff-Appellee,

v

THOMAS K. ABBOTT,

Defendant-Appellant,

and

AUTO BODY CREDIT UNION and JOANN A.
ABBOTT,¹

Defendants.

FOR PUBLICATION

December 28, 2001

9:15 a.m.

No. 223567

Clinton Circuit Court

LC No. 97-008368-CZ

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

FITZGERALD, P.J.

Defendant-Appellant Thomas K. Abbott (defendant) is a General Motors Corporation retiree and receives a monthly pension benefit. He is currently a prisoner at a Michigan correctional facility. Plaintiff, the treasurer of the state of Michigan, filed an action pursuant to the State Correctional Facility Reimbursement Act ("SCFRA"), MCL 800.401 *et seq.*, seeking partial distribution of defendant's pension benefits to the state of Michigan for reimbursement of the cost of caring for defendant. Defendant appeals by consideration as on leave granted² a final circuit court order directing defendant to change his pension address to his prison address, appointing the warden receiver of defendant's pension checks, and directing partial distribution of the funds to the state of Michigan as reimbursement for expenses incurred for defendant's incarceration. Defendant contends that the order violates the Employee Retirement Income Security Act (ERISA), 29 USA 1001 *et seq.*, which prohibits assignment or alienation of a participant's pension benefits. We reverse.

¹ JoAnn Abbot is Thomas Abbott's wife and is currently receiving approximately sixty-seven percent of Thomas' pension at issue in this case.

² *State Treasurer v Abbott*, 461 Mich 911; 603 NW2d 786 (1999).

1144(a). The preemption provision was enacted to "establish pension plan regulations as exclusively a federal concern." *Alessi v Raybestos-Manhattan, Inc.*, 451 US 504, 523; 101 S Ct 1895; 68 L Ed 2d 402 (1981).

C

Defendant argues that reimbursement under the SCFRA violates ERISA because such reimbursement amounts to an assignment of defendant's pension benefits to plaintiff that is specifically prohibited by ERISA. 29 USC 1056(d)(1). Plaintiff contends that the order directing defendant to change his pension address to the prison and deposit of the funds into defendant's prison account does not operate as an assignment. Rather, plaintiff contends that ERISA does not apply to funds once they are deposited into the prison account.

In *State Treasurer v Baugh*, 986 F Supp 1074 (ED Mich, 1997), the state treasurer brought an action against a prisoner and the prisoner's former employer under SCFRA seeking an order directing the former employer's pension plan to deposit the prisoner's pension benefits into his personal prison account that could be used to partially reimburse costs of the prisoner's incarceration. The court held that the treasurer's request violated the anti-alienation provisions of ERISA and was preempted by ERISA.³

The Court agrees that once pension benefits are placed in a personal account, ERISA no longer operates to protect those funds. However, in the instant case, defendant Chrysler Corp. would not be voluntarily depositing the pension funds into [the defendant's] personal prisoner account but would be doing so only by court order. Such an involuntary transfer clearly constitutes an assignment. [*Id.* at 1077 (citations omitted).]

Although *Baugh* is not binding precedent in this Court, *Yellow Freight System, Inc v Michigan*, 464 Mich 21, 29, n 10; 627 NW2d 236 (2001), *Baugh* is entitled to respectful consideration by this Court. *Id.* Additionally, the holding in *Baugh* is consistent with analogous federal decisions in which a state was seeking to use a miscreant's pension for restitution. See, e.g., *Guidry*, *supra* at 493 US 367-369; *United Metal Products Corp v Nat'l Bank of Detroit*, 811 F2d 297 (CA6, 1987). In those cases, the courts refused to create a judicial exception to the ERISA anti-alienation provision for employee misfeasance or criminal misconduct:

A court attempting to carve out an exception that would not swallow the rule would be forced to determine whether application of the rule in particular circumstances would be 'especially' inequitable. The impracticality of defining such a standard reinforces our conclusion that the identification of any exception should be left to Congress. [*Guidry*, *supra* at 493 US 376.]

There is no dispute that directly garnishing defendant's pension benefits to reimburse the state would violate ERISA's anti-alienation provision. *Baugh*, *supra*. Plaintiff attempts to

³ The court noted that application of the anti-alienation rule in *Baugh* begat "an unsettling result," but found that to hold otherwise would constitute an exception to ERISA contrary to Congressional direction. *Id.* at 1077, citing *Guidry*, *supra* at 493 US 376.

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant,

v

THOMAS K. ABBOTT,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

SC No: 120802

COA No: 223567

Clinton CC:

97-008368-CZ

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"L"

Attached hereunto

Order

Entered: April 30, 2002

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

120803 & (33) (34)

STATE TREASURER,

Plaintiff-Appellant,

v

SC: 120803

COA: 223567

Clinton CC: 97-008368-CZ

THOMAS K. ABBOTT,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants.

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal from the December 28, 2001 decision of the Court of Appeals is considered, and it is GRANTED. The motion for stay of precedential effect is DENIED.

tsr:0425



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 30, 2002

Corbin R. Davis

Clerk

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

STATE TREASURER,

Plaintiff-Appellant

V.

THOMAS K. Abbott,

Defendant-Appellee,

and

AUTO BODY CREDIT UNION and JOANN
A. ABBOTT,

Defendants

SC No. 120802
COA No. 223567
Clinton CC No. 97-008368-CZ

STATE OF MICHIGAN)

ss

PROOF OF SERVICE

COUNTY OF JACKSON)

Thomas Kean Abbott, being first duly sworn depose and say he his the defendant, in the above entitled-cause and that on the date below, he served one (1) original and seven (7) copies STATE OF FACTS, BRIEF IN SUPPORT, APPENDIX, TABLE OF CONTENT, INDEX OF AUTHORITIES, AFFIDAVIT OF VERIFICATION, and THIS PROOF OF SERVICE, to Corbin Davis, The Clerk of the Michigan Supreme Court located at 525 W. Ottaw Street, P.O. Box 30052 Lansing, Michigan 48909-7552 and (1) copy of the foremention document upon Daniel M. Levey, Assistant Attorney General Cadillac Place 3030 West Grand Blvd., Suite 10-200 Detroit, Michigan 498202, by enclosing a copies of same in an envelope's plainly addressed as indicated above and by depositing same in a United states Mailbox located in the City of Jackson County and State aforesaid with sufficient postage thereon fully prepaid.

FURTHERMORE, affiant sayth not.

Signed:


THOMAS K ABBOTT # 248677

7-17-02
Date executed:

MCR 2.114(A)(2)(b) I, declare that under the pain and penalty of perjury that the foregoing statements is true to the best of my knowledge and belief.